Supreme Court, U.S.
FILED
NOV - 9 2010
OFFICE OF THE CLERK

175 (3)

No. 10-212

IN THE
Supreme Court of the United States

MARIA HENRIETTA WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF OF PETITIONER

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November 9, 2010

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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INTRODUCTION

The Brief in Opposition only serves to confirm that certiorari is warranted in this case. The petition presents a straightforward legal issue that has divided the circuit courts: whether a defendant may be convicted of "simple assault" under 18 U.S.C. § 111(a) if the Government neither pleads nor proves the elements of common-law assault. The Fifth Circuit's decision below and more recent federal cases acknowledge the circuit split, which has implications for federal law that extend well beyond the immediate question of whether the conviction of Petitioner Maria Williams must be vacated.

Against the backdrop of this acknowledged circuit split, the Government's lead argument for denying certiorari is that Mrs. Williams's petition is interlocutory. Opp. at 9–10. But the Court routinely grants review in circumstances like these, where the reversal of the petitioner's criminal conviction would obviate the need for resentencing in the district court. In fact, when Mrs. Williams requested a resentencing continuance on the ground that her husband is not expected to return from his military deployment in Iraq until December 2010, the district court continued the resentencing in this case until after the Court has considered this petition and, if granted, "until the circuit split has been resolved." Order, *United States v. Williams*, No. 08-CR-1832 [Dkt. 82] (W.D. Tex. June 17, 2010). Simply put, there is no good reason for the Court to defer its consideration of Mrs. Williams's petition—or its resolution of the circuit split that it presents.

In an attempt to obscure and downplay the circuit split, the Government tries to give the

impression that the 2008 amendments to § 111(a) resolved the conflict among the circuits. Those amendments, however, addressed a different ambiguity in the statute, without resolving the circuit split over whether a conviction for "simple assault" requires proof of assault. Notably, no federal court to have considered the question with the benefit of the 2008 amendments deemed them to be an answer, and even the Government in its opposition brief had to concede that "the 2008 amendments to the statute did not explicitly resolve the issue presented here." Opp. at 16. Thus, it remains for this Court to resolve the circuit courts' disagreement over the question presented, and Mrs. Williams's case offers an ideal vehicle for doing so.

REASONS FOR GRANTING THE WRIT

I. The Government Offers No Good Reason For The Court To Defer Consideration Of The Petition Or To Delay Resolution Of The Circuit Split This Case Presents.

The Government's lead argument in opposition is that review is premature. Because the Fifth Circuit's decision remanded for resentencing at the same time that it affirmed Mrs. Williams's conviction under § 111(a), the Government contends that "review is not warranted" at this time. Opp. 9.

The Government's argument lacks merit. This Court routinely finds criminal cases appropriate for review where, as here, the circuit court has affirmed the petitioner's conviction but remanded for resentencing. *See, e.g.*, *Skilling v. United States*, 558 U.S. ---, 130 S. Ct. 393 (2009); *Begay v. United States*, 551 U.S. 1191 (2007); *Zedner v. United States*, 546 U.S. 1085 (2006). This approach is consistent with

the well-settled principle that, where "there is some important and clear-cut issue of law that is fundamental to the further conduct of the case and that would otherwise qualify as a basis for certiorari, the case may be reviewed despite its interlocutory status." ROBERT J. STERN, ET AL., SUPREME COURT PRACTICE § 4.18, at 259 (8th ed. 2002).

In this case, Mrs. Williams raises a clear-cut legal issue that is fundamental to her conviction and that has divided the circuit courts. It serves no conceivable interest to force Mrs. Williams to wait until after remand, resentencing, and the resolution of further appeals (if any) before reprising her petition for certiorari. Tellingly, the Government does not even try to explain how deferring review might benefit this Court or the courts below.

Furthermore, Mrs. Williams's petition presents a particularly compelling case for this Court to review now, without waiting for the conclusion of further proceedings on remand. After the Fifth Circuit affirmed her convictions, Mrs. Williams moved the district court for a continuance of her resentencing, noting that: (1) her husband is not expected to return from his current tour of duty with the U.S. Army in Iraq until December 2010; and (2) Mrs. Williams is currently the sole caretaker of her minor son and a minor granddaughter. *See* Mot. to Continue Re-Sentencing, *Williams*, 08-CR-01832 [Dkt. 81] (W.D. Tex. June 16, 2010). The court granted the motion and continued Mrs. Williams's resentencing "until after her petition for certiorari is ruled upon, and if her appeal is accepted by the United States Supreme Court, until the circuit split

has been resolved." Order, *Williams*, No. 08-CR-1832 [Dkt. 82] (W.D. Tex. June 17, 2010).

At bottom, there is no valid reason for denying certiorari on the ground that the petition is interlocutory. Mrs. Williams's petition offers a good vehicle for resolving an acknowledged circuit split on an important question of federal law. A remand will neither impact that legal question nor assist the Court in any later consideration of this case. But if the Court resolves the circuit split by adopting Mrs. Williams's interpretation of § 111(a), then resentencing will be unnecessary. In this situation, as the district court recognized, it makes no sense to require Mrs. Williams to undergo resentencing before this Court has considered her petition.

II. The Government Cannot Dispute That The Courts Of Appeals Are Divided With Respect To The Question Presented.

Despite its efforts, the Government cannot obscure the clear and unmistakable split among the circuits over the meaning of "simple assault," as the term appears in § 111(a). In the decision below, the Fifth Circuit noted that "[s]everal circuits have split on this question." App. 8a. The Fifth Circuit expressly acknowledged the conflict between its holding and that of the Ninth Circuit in *United States v. Chapman*, 528 F.3d 1215 (9th Cir. 2008). App. 11-12a. More recent federal decisions continue to recognize the existence of a circuit split on the issue. *See, e.g.*, *United States v. Perea*, No. CR 09-1034 JB, --- F. Supp. 2d ---, 2010 WL 2292997, at *6–8 (D.N.M. Apr. 23, 2010) (addressing "the Circuit Split Whether § 111(a) Requires Assaultive Conduct").

It bears emphasis that the split among the federal circuits on this issue is even more pronounced than the decision below acknowledges. The Fifth Circuit held that Mrs. Williams committed "simple assault" under § 111(a) even though she had not committed an assault under the common-law meaning of the term. App. 11–12a. The Fifth Circuit's decision thus conflicts with the reasoning of numerous other circuits which hold "that 'simple assault' in § 111 should be defined by reference both to the common-law meaning of assault and to the meaning of 'simple assault' as Congress uses that phrase in § 113." *United States v. Hathaway*, 318 F.3d 1001, 1008 (10th Cir. 2003).[1]

To be sure, these cases hold that the distinction between misdemeanor "simple assault" and a more serious offense under the statute turns on whether there was physical contact or a similar aggravating factor, such as intent to commit a felony. *See, e.g., United States v. Vallery*, 437 F.3d 626, 632 (7th Cir. 2006). But each of these decisions is based upon the principle that the term "simple assault" must carry its common-law meaning. That is precisely the principle that the Fifth Circuit rejected in holding that "simple assault" is merely a "term of art" that does not necessarily involve the elements of common-law simple assault. App. 10a.

Against the background of this acknowledged circuit split, the Government erroneously contends that the 2008 amendments to § 111(a) provide a

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[1] *See also United States v. Vallery*, 437 F.3d 626, 631 (7th Cir. 2006); *United States v. Yates*, 304 F.3d 818, 822 (8th Cir. 2002); *United States v. McCulligan*, 256 F.3d 97, 104 (3d Cir. 2001); *United States v. Chestaro*, 197 F.3d 600, 605 (2d Cir. 1999).

valid basis for denying review. Opp. 15–16. Those amendments, however, are simply not relevant to the circuit split at issue here regarding the meaning of "simple assault." The 2008 amendments resolved a different ambiguity in the earlier version of § 111(a): they clarified which types of felony assaults carry a maximum eight-year penalty under the statute, without addressing the "simple assault" provision of § 111(a) that divided the circuits in this case. *See* Court Security Improvement Act of 2007, Pub. L. No. 110-177, § 208(b), 121 Stat. 2534, 2538 (2008); *see also* Pet. 11–12.

The Government's own Brief in Opposition further confirms that the 2008 amendments have not resolved the conflict among the circuit courts. Although the Government initially characterizes the question presented as "a disagreement about a now-superseded statute," Opp. 9, it later concedes "that the 2008 amendments to the statute did not explicitly resolve the issue presented here," *id.* at 16. This concession was necessary because the courts that have recently disagreed about the interpretation of "simple assault" in § 111(a) were aware of the 2008 amendments but did not conclude that the amendments resolved the circuit split. *See, e.g.*, *United States v. Gagnon*, 553 F.3d 1021, 1024 n.2 (6th Cir. 2009) ("[T]he amendments do not directly resolve the ambiguity at issue here."); *id.* at 1025 n.4 ("Congress's amendment does little to clarify the primary question in this appeal: whether § 111 is limited only to assaults or includes all the actions spelled out in § 111(a).").

The Government's concession underscores that there is no reason to "wait to see" if the circuit split

will recur in another case involving the amended statute. Opp. 16. The 2008 amendments to § 111(a) did not resolve the ambiguity that gave rise to the split. The conflict among the circuits persists, and this Court's intervention is necessary to resolve it.

III. The Decision Below Disregards The Plain Language Of § 111(a) And Well-Settled Principles Of Statutory Interpretation.

Because the Government cannot plausibly dispute the circuit split presented by Mrs. Williams's petition, it spends several pages of its opposition brief arguing the merits of the case. *See* Opp. 10–13, 18–20. The Government's attention to the merits only serves to underscore that the Court should grant the petition for certiorari and set this case for plenary review. Moreover, the Government's merits arguments confirm that the Fifth Circuit's interpretation of § 111(a) is fundamentally flawed.

The error in the Fifth Circuit's interpretation of § 111(a) is the disconnection of the term "simple assault" from its well-established, common-law meaning. When Congress uses a specific, common-law term in the text of a statute, the courts should infer that Congress meant to incorporate the established common-law meaning of the term. *See Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992); *see also Morrisette v. United States*, 342 U.S. 246, 263 (1952) ("In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.").

The Government can hardly dispute that "simple assault" is a common-law term with a well-established meaning. *See Vallery*, 437 F.3d at 631

("There is no dispute that 'simple assault' is a crime 'committed by either a willful attempt to inflict injury upon the person of another, or by a threat to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm.'"). But the Government barely even addresses the common-law meaning of "simple assault" in its opposition brief, let alone offers any legitimate justification for depriving the term of its common-law meaning for purposes of § 111(a).

Indeed, the federal courts broadly agree that the term "simple assault" in § 113(a) of Title 18 carries the common-law meaning. *E.g.*, *United States v. Bayes*, 210 F.3d 64, 68 (1st Cir. 2000); *see also* Pet. 15 (citing cases). The Government tries to distinguish "simple assault" in § 111(a) from "simple assault" in § 113(a) on the ground that the former "prohibits assault *and* five other categories of conduct," Opp. at 10–11, n.1 (emphasis in original), but that argument simply begs the question of whether § 111(a), as amended in 1994, criminalizes conduct other than assault. After all, there is no reason to presume that Congress intended to give the same common-law term dramatically different meanings within different sections of the same chapter of Title 18. That is why federal courts have routinely held that "'simple assault' in § 111 should be defined by reference both to the common-law meaning of assault and to the meaning of 'simple assault' as Congress used that phrase in § 113." *E.g.*, *Hathaway*, 318 F.3d at 1008. The Government's brief has no good answer for this precedent, which illustrates the problems with the Fifth Circuit's decision and underscores the need for this Court to

resolve the disagreement among the circuits over the interpretation of § 111(a).

The Government's alternative argument that the "conduct in this case did constitute an assault" need not detain the Court at all. *See* Opp. at 18. Although the Government cites extensively from its own self-serving version of events proffered in the courts below, the account adopted by the Fifth Circuit is more pertinent to resolution of the legal question addressed in its decision. The Fifth Circuit conspicuously did not find that Mrs. Williams had committed an assault; instead, it asked whether "a defendant [can] be convicted of forcible resistance under th[e] statute without having committed an underlying assault?" App. 7a. This is because Mrs. Williams was not convicted by the jury of having committed an assault. On the contrary, the evidence before the district court was that Mrs. Williams "wasn't . . . trying to fight" with the military police who were taking her into custody. App. 3a.

In light of the Fifth Circuit's decision and the evidence before the district court, it strains the definition of "assault" for the Government now to contend that Mrs. Williams's struggles with the military police constituted "simple assault" within the meaning of the statute. The Government's argument would fail even in the context of plenary review. It is especially misplaced now and provides no valid basis for denying the petition for certiorari.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari and either summarily reverse the judgment below or set the case for plenary review.

Respectfully submitted,

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